

Application No. 10/055,797

REMARKS

The above-identified patent application has been reviewed in light of the Examiner's Action dated December 3, 2002. In the amendments set forth above, Claim 1 has been amended without intending to abandon or to dedicate to the public any patentable subject matter, and without narrowing the claim, Claims 37-39 are new, and no claims have been canceled. Accordingly, Claims 1-8 and 37-39 are now pending. As set out more fully below, reconsideration and withdrawal of the rejections of the claims are respectfully requested.

Claims 1-8 stand rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 5,485,787 to Bowcutt et al. ("Bowcutt"). In order to establish a *prima facie* case of obviousness under 35 U.S.C. §103, there must be some suggestion or motivation to modify the reference, there must be a reasonable expectation of success, and the prior art reference must teach or suggest all of the claim limitations. (MPEP §2143). It is submitted that a *prima facie* case to reject Claims 1-8 has not been established. In particular, and as discussed more fully below, Bowcutt does not teach, suggest or disclose at least the feature of a projectile having a nose that is one of substantially flat and concave. Accordingly, for at least this reason, Claims 1-8 are not obvious in view of Bowcutt.

The Bowcutt reference is generally directed to a gas gun launched scramjet test projectile. The test projectile discussed by Bowcutt is designed to travel at velocities greater than Mach 5. The projectile is propulsion-assisted and is used to enable the simulation of flow physics and the acquisition of performance data that correlates directly to those of a scramjet powered vehicle. (Bowcutt, col. 4, lns. 5-7). Accordingly, the projectile discussed by Bowcutt is concerned with

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the integration of the air frame and propulsion systems for vehicles or projectiles traveling at supersonic and hypersonic speeds. (See Bowcutt, col. 1, lns. 27-30). The projectile illustrated by Bowcutt includes a nose cap 101 secured to the forebody 102 to form an external surface that extends from the projectile nose tip 103 rearwardly to the vicinity of the leading edge of the cowl 110. (Bowcutt, col. 5, lns. 5-9). Because the projectile 100 is intended to travel at velocities greater than Mach 5 (Bowcutt Abstract, Claim 1), and because parameters that include the forebody and inlet contraction ratios, the inlet efficiency, etc., impacts the performance of ramjet and scramjet systems (Bowcutt, col. 1, ln. 65 to col. 2, ln. 3), there is no teaching, suggestion or disclosure of a substantially flat or concave nose as recited by the pending claims. In addition, because removal of the nose 101 would foreshorten the compression surface S and leave an unfinished threaded portion T, Bowcutt cannot be understood as teaching, suggesting or disclosing operation of that reference's projectile without the tip 101. (Bowcutt, col. 4, ln. 63 to col. 5, ln. 9; Fig. 1). Furthermore, because Bowcutt is concerned with propelling a projectile at velocities of greater than Mach 5, Bowcutt teaches away from a projectile with a nose that is substantially flat or concave, or a nose that is adapted to inhibit deflection of the projectile from a face of rock in an excavation.

For the reasons set forth above, the Bowcutt reference does not teach, suggest or disclose a system for launching a projectile to remove a body of rock in an excavation as claimed. Furthermore, the Bowcutt reference teaches away from specific structural aspects of the claimed system. Accordingly, the rejections of Claims 1-8 should be reconsidered and withdrawn.

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New Claims 37-39 depend from Claim 1, and recite specific projectile nose configurations disclosed by the specification. Therefore, Claims 37-39 are allowable for at least the same reasons that Claim 1 is allowable. Claims 37-39 do not add new matter.

Based upon the foregoing, Applicants believe that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

SHERIDAN ROSS P.C.

By:



Bradley M. Knepper
Registration No. 44,189
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

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